

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CR24-058-JCC
)	
Plaintiff,)	
)	DEFENSE SENTENCING
v.)	MEMORANDUM
)	
JUSTIN BAKER,)	
)	
Defendant.)	

Justin Baker, through counsel, presents this sentencing memorandum in support of the following sentencing recommendation based on a Zone B guideline range of 6 to 12 months. Because Mr. Baker's range falls within Zone B of the USSG Sentencing Table, the Sentencing Guidelines afford Mr. Baker alternative confinement to imprisonment, such as home confinement. Accordingly, the defense recommends a six-month sentence where Mr. Baker serves four months of imprisonment followed by a special condition of supervised release requiring two months of home confinement.

Once released from custody, Mr. Baker will register as a sex offender for 15 years with an opportunity to petition for early removal after 10 years, so long as there are no violations. Finally, the defense agrees that five years of supervised release would be appropriate.

I. BACKGROUND

Justin Baker is before this court facing his very first criminal judgment. At the age of 42, and being a father of three young children, he now faces judgment for his

1 conduct on March 14, 2024. In his letter to the court, Mr. Baker offers his sincere
2 apologies to E.C., the victim in this case, while also appreciating the punishment he has
3 experienced thus far for his actions. Ex. 1.

4 Prior to his arrest, Mr. Baker had a promising career working in the field of
5 alumni affairs at Pitzer College in Southern California. He had a stable family, raising
6 three young kids. And he developed a strong network in his community that involved
7 activities with his church together with coaching volleyball. In fact, Mr. Baker always
8 found himself busy with activities while maintaining a strong work ethic throughout his
9 21 years of professional employment. At the same time, he made it a priority to be an
10 attentive father who was always present for his kids and their activities. In all,
11 Mr. Baker was living a modest yet comfortable life in the Los Angeles suburbs until
12 March 14, 2024.

13 Following his arrest, and long before trial, Mr. Baker experienced the
14 punishment for his actions. Prior to trial, while Mr. Baker was on pre-trial release, his
15 wife of 17 years filed for divorce and sought full custody of their children. During the
16 time of his pre-trial release, Mr. Baker was still employed and kept himself busy while
17 living with his parents in their home. He decided to enter into therapy to focus on his
18 mental health and, equally important, on ways to address his own compulsions and
19 mental addictions. In treatment, he found a solid group of support that certainly played
20 a key role in his success on pre-trial release.

21 The trial was short and immediately following the jury verdict, Mr. Baker was
22 remanded into custody. Since his kids live in Southern California, he has not seen them
23 for the past four months after being taken into custody. Additionally, Pitzer College
24 terminated his employment because of the conviction. Finally, Mr. Baker will have to
25 live with the stigma of his conviction, presumably for the rest of his life, particularly
26 now that he has been convicted of an offense requiring sex offender registration. For

1 someone with no criminal history, this is all significant punishment that will leave an
2 impression on Mr. Baker for the rest of his life.

3 While sex offenses are without dispute very serious, we cannot lose sight of the
4 fact that not all such offenses are weighted equally. Mr. Baker was charged with, and
5 convicted of, abusive sexual contact on an aircraft which is a Class E felony carrying a
6 maximum sentence of two years. According to Probation's sentencing guideline
7 calculations, which the defense agrees with, Mr. Baker's range falls within Zone B of
8 the sentencing table—being a Zone that would typically result in sentences of
9 alternative confinement such as home detention. In other words, Mr. Baker's crime of
10 conviction is arguably amongst the lowest level "sex offense" crimes in the United
11 States Code. For the reasons presented below, a sentence above the guidelines, let alone
12 a sentence of 24 months, being the statutory maximum, would be disproportionate to
13 any other sentence for similarly situated cases.

14 **II. THE UNITED STATES SENTENCING GUIDELINES**

15 The defense agrees with Probation's guideline calculations. Specifically,
16 Mr. Baker meets the criteria for the Zero Point Offender reduction because the offense
17 conduct occurred before the Sentencing Commission modified the criteria in November
18 of 2024. Prior to the November 1, 2024, amendments, the only sex offenses that would
19 disqualify a defendant from the Zero Point Offender reduction would be sex offenses
20 against minors. USSG § 4C1.1 (*see definitions and additional considerations*, 2023
21 edition). Effective November 1, 2024, the commission made no distinction between sex
22 offenses against minors versus those offenses committed against adults (*see definitions*
23 *and additional considerations*, November 2024 edition). Because Mr. Baker would
24 benefit from the definition of a "sex offense" that existed at the time of the offense
25 conduct, application of the current guidelines would violate *ex post facto*. *See* USSG
26 § 1B1.11(b)(1). Accordingly, since the victim in this case was an adult at the time of the

1 offense, Mr. Baker’s conviction would not be considered a sex offense under USSG
2 § 4C1.1 in effect at the time of the offense conduct.

3 The government still objects to the application of the Zero Point Offender
4 reduction asserting that the instant offense involved “violence” thereby disqualifying
5 Mr. Baker under USSG §4C1.1. *See Gov’t objections addendum in final Pre-Sentence*
6 *Report*. However, the government’s position relies on cases that interpret “violent
7 felony” as defined by statute and the Sentencing Guidelines with crimes of conviction
8 involving an element of force. Here, USSG § 4C1.1 does not reference “crimes of
9 violence” or “violent felony” as those terms are used by, and specifically defined by,
10 the United States Code or the Sentencing Guidelines. Instead, USSG §4C1.1(a)(3)
11 relates to conduct—specifically, using “violence or credible threats of violence in
12 connection with the offense.”

13 First, we agree with Probation’s conclusion that Mr. Baker’s offense did not
14 involve violence or credible threats of violence because there was no “physical pain” or
15 “injury” to the victim. *See PSR Addendum*. In short, there was no physical force used
16 by Mr. Baker when touching the victim’s private areas of her body without consent. For
17 those reasons, we agree with Probation’s conclusion that Mr. Baker’s offense conduct
18 would not preclude him from qualifying for the Zero Point Offender reduction in
19 accordance with USSG § 4C1.1(a)(3).

20 Next, the cases that the government relies on each involve interpreting “violent
21 felony” or “crime of violence” as defined by the United States Code and the Sentencing
22 Guidelines. Additionally, the cases that the government relies on analyze the elements
23 of the offense of conviction to determine whether there exists a categorical match with
24 the “violent felony” definition. Specifically, each of the cases relied on by the
25 government involve a “force” clause for the offense. Here, Section 4C1.1(a)(3) does not
26 reference “violent felony” or “crime of violence,” terms that have statutory definitions

1 under the Armed Career Criminal Act and under 18 U.S.C. § 16 respectively. Instead,
2 USSG § 4C1.1 focuses on conduct that goes beyond the statutory elements of the
3 offense—being whether the overall offense conduct further involved violence or
4 credible threats of violence.

5 The Sentencing Guidelines do not define the term “violence.” In fact, the
6 language used in Section 4C1.1 points to a different application of “violence” than the
7 concepts of “violent felony” or “crime of violence” as defined by statute or the
8 sentencing guidelines and interpreted by caselaw that the government is relying on.
9 Additionally, the phrase “in connection with the offense” suggests an examination of
10 conduct that goes beyond the elements of the statute. Without a definition of “violence”
11 from the Sentencing Commission, the Court should turn to contemporary dictionaries to
12 fill the gap. *United States v. Bauer*, 2024 WL 324234 (D.D.C. 2024). The District Court
13 of the District of Columbia, for example, addressed this same issue as to the meaning of
14 “violence” as used in Section 4C1.1(a)(3) for a “January 6th” criminal case where the
15 defendant assaulted a police officer and threatened to hang an elected lawmaker who
16 had an office nearby. *Id.* at 2. The district court accepted the following definition under
17 this Guideline based on the Black’s Law Dictionary definition: “Contemporary
18 dictionaries define ‘violence’ as ‘[t]he use of physical force’ typically ‘accompanied by
19 fury, vehemence, or outrage’ and ‘unlawfully exercised with the intent to harm’ . . . Or,
20 similarly, ‘violence’ is the ‘exertion of any physical force so as to injure or abuse
21 [citing Webster’s definition].’” *Id.*

22 In the instant case, the government will argue that Mr. Baker used violence when
23 he touched the victim’s breast, buttocks, and genitals without her consent. However,
24 this conduct does not fit within the common definition of “violence” as there is no
25 evidence that Mr. Baker used any physical force with the intent to cause injury when he
26 touched the victim. Simply put, the fact that Mr. Baker touched the victim in her private

1 areas does not rise to the level of violent conduct when applying the conventional
2 definition of violence.

3 For these reasons, Mr. Baker is eligible for the Zero Point Offender reduction.
4 Should this Court agree with the calculations of both the defense and Probation,
5 Mr. Baker's total offense level would be at Level 10. With zero criminal history, his
6 range is 6 to 12 months in custody.

7 **III. THE SECTION 3553(A) FACTORS**

8 **A. The Nature and Circumstances of the Offense and Sufficient** 9 **Punishment that is not Greater than Necessary.**

10 Mr. Baker was convicted of touching E.C., without consent, on her breast, inner
11 thigh, buttocks, and vagina. E.C. testified that the touching was over her clothes and
12 that at no point did Mr. Baker touch her bare skin. While the timing of how long the
13 touching occurred was a disputed fact at trial, E.C. testified that the touching lasted for
14 a couple minutes. Regardless, there were no facts surrounding the touching that would
15 support any aggravating upward adjustments. In fact, neither Probation nor the
16 government is recommending any upward adjustments in this case, simply because
17 there are no aggravating facts to support any enhancements.

18 Yet despite there being no aggravators, there is a recommendation from
19 Probation that this Court sentence Mr. Baker to the statutory maximum period
20 authorized by law. Such a sentence, if imposed, would be greatly disproportionate
21 under the circumstances, particularly since Mr. Baker is a first-time offender with no
22 criminal history whose guideline range falls within Zone B of the sentencing table.

23 When crafting guidelines, the duties of the United States Sentencing
24 Commission are listed in 28 U.S.C. § 994. Specifically, subsection (j) directs the
25 commission as follows:

26 The commission shall insure that the guidelines reflect the general
appropriateness of imposing a sentence *other than imprisonment* in cases

1 in which the defendant is a first offender who has not been convicted of a
 2 crime of violence or an otherwise serious offense, and the general
 3 appropriateness of imposing a term of imprisonment on a person
 4 convicted of a crime of violence that results in serious bodily injury.

5 28 U.S.C. § 994(j) (emphasis added).

6 With a guideline sentencing range within Zone B of the sentencing table, the
 7 Sentencing Commission recommends that the sentencing court consider a minimum
 8 term that may be satisfied by a term of imprisonment that includes a term of supervised
 9 release with a condition that substitutes community confinement or home detention for
 10 imprisonment provided that at least one month be satisfied by imprisonment. USSG
 11 § 5C1.1(c)(2). Of course, the Sentencing Commission recognizes other sentencing
 12 alternatives that could include a sentence of probation or a pure sentence of
 13 imprisonment. USSG § 5C1.1(c)(1) & (c)(3). However, for Zero Point Offenders, such
 14 as Mr. Baker, who fall within Zone B, “a sentence other than a sentence of
 15 imprisonment, in accordance with [USSG § 5C1.1(c)], is generally appropriate.” *See*
 16 Commentary Application Note 10, referencing 28 U.S.C. § 994(j).

17 Here, the offense occurred toward the end of the flight, being approximately 20
 18 to 30 minutes from landing. There was no testimony to support any claim that
 19 Mr. Baker may have used physical restraint. Had there been such testimony, surely the
 20 government and/or Probation would have sought an enhancement in accordance with
 21 USSG § 3A1.3 (providing +2 upward adjustment if the victim was physically
 22 restrained). Additionally, there was no testimony that E.C. qualified as a vulnerable
 23 victim in accordance with USSG § 3A1.1(b) (providing a +2 upward adjustment if the
 24 defendant knew, or should have known, that E.C. was a “vulnerable victim.”).

25 Finally, counsel is unaware of any similarly situated case involving abusive
 26 sexual contact where the sentencing court imposed the statutory maximum, let alone a
 sentence above the guideline range. For example, recent cases in this district resulted in
 the following sentences: In *United States v. Jurkovic*, CR23-001-RSL (a case that went

1 to trial and involved a 16-year-old victim), the district court sentenced the defendant to
2 8 months in custody. In *United States v. Brick*, CR23-052-JHC, (a case where the
3 defendant forced the victim's hand onto his genitals while groping her breast), the
4 district court sentenced the defendant to six months in custody. And, in *United States v.*
5 *Kumar*, CR24-041-JNW, (a trial case where the court found evidence supporting victim
6 vulnerability) the sentencing court imposed a 15-month sentence being at the low end
7 of the range even with the victim being under the age of 18. In other words, even with
8 aggravating circumstances, we have not seen a sentence outside the advisory range, let
9 alone at or near the statutory maximum.

10 The government will likely argue, as pointed out by Probation, that in 2004
11 Mr. Baker attempted to touch a 15-year-old member of his church group (identified as
12 MV1). As such, the government may argue that the Court should consider this past
13 incident to support a sentence above the guideline range. Over the defendant's
14 objection, MV1 testified that Mr. Baker attempted to touch her private areas without
15 consent at a pool party twenty years ago. As the Court heard at trial, there was an
16 investigation into the incident leading to no charges. Even though this Court permitted
17 the government to introduce evidence of this alleged incident under FRE 413, the fact
18 remains that this evidence is not considered "relevant conduct" for sentencing purposes
19 in accordance with USSG § 1B1.3. In fact, Probation notes at paragraphs 15 through 19
20 in the final PSR, that this alleged incident from 20 years ago is "not part of Relevant
21 Conduct." Accordingly, this irrelevant conduct for sentencing purposes should not
22 factor into calculating Mr. Baker's guideline range per the directives of Section
23 1B1.3—specifically, Section 1B1.3 outlines the "factors that determine the Guideline
24 Range"—being the relevant conduct.

25 While Probation's sentencing recommendation references the allegations of
26 MV1, Probation nevertheless agrees that the advisory range is not impacted by these

1 allegations. Since these allegations remain contested, with no formal charges or
 2 adjudication to follow, due process requires that the sentencing determination should
 3 focus exclusively on the offense of conviction and not on what may, or may not have,
 4 happened 20 years ago. Given that there are no aggravating circumstances in this case,
 5 together with Mr. Baker being a first-time offender qualifying for the Zero Point
 6 Offender reduction, a split sentencing of four months of imprisonment together with
 7 two months of home confinement would be sufficient and not greater than necessary. A
 8 sentence above the guidelines, let alone a statutory maximum sentence, would be
 9 unprecedented and greater than necessary under these circumstances.

10 **B. The Personal History and Characteristics of Justin Baker.**

11 Those who know Mr. Baker were shocked when they learned about his current
 12 situation. Nevertheless, many in his community are still willing to show their support as
 13 they still believe he is a respectful and caring person with a “heart of gold,” as
 14 described by one person who knows him well. Ex. 2. One of Mr. Baker’s friends, who
 15 views him as a brother, describes Mr. Baker as a hard worker who truly shines as a
 16 father to his young kids. Ex. 3. Mr. Baker’s mother describes him as “kind, considerate,
 17 compassionate and caring.” Ex. 4. Furthermore, she has observed that Mr. Baker has
 18 learned from his mistakes while seeking help through counseling for self-improvement.
 19 *Id.* Finally, Mr. Baker’s father describes how his son can be trusted to follow all court
 20 orders, as he had done while released on an appearance bond. Ex. 5. In fact,
 21 Mr. Baker’s father served as his chaperone during the flights from Southern California
 22 to court in Seattle. *Id.* Mr. Baker followed all the rules of his pre-trial release, he made
 23 it to court on time, and he showed utmost respect to all parties and witnesses during the
 24 trial. *Id.*

25 Mr. Baker understands that he is to blame for the break-up of his marriage.
 26 Ex. 1. He acknowledges his flaws and failures as a husband and accepts the reality that

1 he caused his family to break apart. *Id.* And for Mr. Baker, that amounts to immense
2 punishment. *Id.* That said, he will continue to be a devoted father his children no matter
3 what. *Id.* And once released from custody, he will continue with counseling and will
4 follow through with all conditions of supervision, just as he had done during his pre-
5 trial release. *Id.*

6 **C. The need for the Sentence to Afford Treatment and Rehabilitation in**
7 **the Most Effective Manner.**

8 A conviction for abusive sexual contact will entail special conditions of
9 supervision similar to some of the most serious sex offense convictions. In addition to
10 Mr. Baker having to register as a sex offender for at least 10 years, he will also be
11 required to participate in sexual deviancy treatment. *See* special conditions 3 & 4.
12 Additionally, he will be required to follow lifestyle restrictions as recommended by his
13 therapist or counselor. *See* special condition 5. Finally, Mr. Baker will be ordered to
14 submit to periodic polygraph testing to ensure that he follows his treatment program.
15 Among other special conditions that are tailored to those convicted of sex-related
16 offenses, these special conditions are more onerous than what other offenders typically
17 face after being released from custody.

18 Mr. Baker submitted a letter to this court after reflecting on this case while
19 incarcerated at the FDC. Ex. 1. He explained that he is committed to treatment and
20 further counseling once he is released from custody. *Id.* In addition, this Court has
21 support letters from others who have participated in counseling with Mr. Baker, and
22 each have expressed how committed Mr. Baker is to treatment and self-improvement.
23 Exhibits 2, 6, & 7. With the support from those in his group, from his counselor, and
24 from his parents, Mr. Baker will focus on treatment. For these reasons, further
25 incarceration is not necessary. For a defendant in Zone B, Mr. Baker has served a
26 sufficient period in custody to meet the sentencing goals of Section 3553(a). Now, the

1 next part of his sentence should focus on his treatment needs. Alternative confinement
2 in the form of house arrest moving forward as a condition of supervised release will
3 certainly achieve that goal.

4 **IV. CONCLUSION**

5 For these reasons, this Court should sentence Mr. Baker to four months in
6 custody followed by two months of house arrest as a special condition of supervised
7 release. Because Mr. Baker is committed to treatment, including sexual deviancy
8 treatment, he does not oppose any of the proposed special conditions from U.S.
9 Probation.

10 DATED this 11th day of February 2025.

11 Respectfully submitted,

12 *s/ Jesse Cantor*

13 *s/ Colleen Fitzharris*

14 Assistant Federal Public Defenders
15 Attorney for Justin Baker
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